

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems)	CC Docket No. 94-102
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones)	WT Docket No. 01-309
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services)	WT Docket No. 03-264
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule)	WT Docket No. 07-166

REQUEST FOR WAIVER OF COMMISSION RULES

**STATE OF ARKANSAS
By Governor Mike Beebe**

I. INTRODUCTION

The State of Arkansas, hereby respectfully requests that the Federal Communications Commission (“Commission” or “FCC”) grant a waiver of the prohibition on new operations to permit deployment of the State of Arkansas’s already-planned system. The Commission has prohibited “authorization . . . of any new narrowband operations in Channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69,” after August 30, 2007.¹ A recent public notice further states that narrowband equipment may be placed into operation after August 30, 2007, but only in the new consolidated narrowband block.² Thus, the State of Arkansas respectfully requests that the Commission grant a waiver of the prohibition to permit deployment of new equipment, including handsets and base stations, after August 30, 2007, to operate in conjunction with the State of Arkansas’s already-licensed 700 MHz system.³ Without such a waiver, the Commission’s policy poses a significant threat to the State of Arkansas’s plans to complete implementation of a needed new life-saving communication system in its jurisdiction.

II. BACKGROUND

The State of Arkansas, as the provider of the Arkansas Wireless Information Network (AWIN), serves the communications needs of law enforcement, fire services and emergency services. The State of Arkansas’s jurisdiction includes the entire geographic region of the State

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Second Report and Order, FCC 07-132 (rel. Aug. 10, 2007) (“Order” or “Second Report and Order”).*

² *New Public Safety Narrowband Operations Outside of the 700 MHz Consolidated Block Prohibited as of August 30, 2007, Public Notice, PS Docket No. 06-229, WT Docket No. 96-86, DA 07-3644 (August 16, 2007).*

³ The State of Arkansas recognizes that, pursuant to the Order, this new equipment will not be eligible for relocation funding. The State of Arkansas disagrees with this policy against relocation funding, but notes that this Request for Waiver does not address reimbursement issues. Thus, the State of Arkansas seek this waiver request without prejudice to any future motions opposing the policy for relocation funding.

of Arkansas. Currently, the State of Arkansas is in the process of implementing a vital communication system on the current 700 MHz narrowband spectrum under call sign WPTZ801 (granted in January 2002, effective June 2006). Under this call sign the State of Arkansas is authorized frequencies that are described in the attached document. Because of the complicated nature of this process, the State of Arkansas started detail planning approximately three and one half years ago. The State of Arkansas sought initial budget approval in September 2004 and began placing equipment orders at that time. Since then, four channels for high performance data, 219 modems for high performance data, four base stations and approximately 9000 subscriber units have been deployed. Full deployment of this new system was scheduled for March 31, 2008. The State of Arkansas will not be able to meet the August 30, 2007, deadline due to the number of sites involved and the limited availability of resources to perform the implementation. Given the critical need for interoperable communications in Arkansas, the inability to fully utilize the planned system threatens the safety and lives of the State of Arkansas's first responders and the health and property of the public they serve.

III. THE COMMISSION SHOULD GRANT THE STATE OF ARKANSAS A WAIVER OF THE COMMISSION'S RULE PROHIBITING NEW EQUIPMENT

Under Section 1.3 of the Commission's rules,⁴ the Commission may exercise its discretion to waive a rule for "good cause shown."⁵ A waiver is appropriate if special circumstances warrant a deviation from the general rule and such deviation will help serve the public interest.⁶

⁴ 47 C.F.R. § 1.3.

⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Petition of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell for Expedited Declaratory Ruling on Interstate IntraLATA Toll Dialing Parity or, in the Alternative, Various Other Relief*, Order, 14 FCC Rcd 6806, ¶ 11 (1999).

⁶ *Id.* (citing *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

The waiver process allows the Commission to “maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility.”⁷ In deciding whether or not to grant specific waiver requests, the Commission has indicated it must “take into account considerations of hardship, equity, or more effective implementation of overall policy” in its broader quest for regulation in the “public interest.”⁸ As explained below, grant of the State of Arkansas’s request would serve policy objectives of the Commission, particularly the deployment of spectrum to meet public safety needs.

The State of Arkansas will undergo significant hardship if the FCC does not waive the new rule to permit the State of Arkansas to deploy its equipment as planned. As noted above, the State of Arkansas has invested significant time and money in planning a new Project 25, digital, trunked communications system in the 700 MHz spectrum formerly allocated for public safety narrowband communications. Specifically, the State of Arkansas has invested \$73,407,947.00 and five (5) years planning and implementing its new system. This new system is designed to provide interoperable communications to all jurisdictions in the State of Arkansas.

It is impossible for the State of Arkansas to fully deploy this system by the August 30, 2007, deadline. By the time the public notice was issued, the State of Arkansas was left with two weeks to deploy base station equipment to ten (10) sites. The FCC’s new rule forces the State of Arkansas to revert to using old, out-dated radios because some significant portions of the planned system cannot be deployed, and efforts to deploy a state of the art, interoperable communications network will be severely disrupted and delayed. This would not only deplete precious funding, but also significantly diminish the State of Arkansas’s ability to adequately meet its immediate needs for vital mission-critical voice communications.

⁷ *WAIT Radio*, 418 F.2d at 1159.

⁸ *Id.*

Lastly, a waiver of the rules for the State of Arkansas would be more effective in implementing the Commission's goal of improving public safety resources. As noted above, the State of Arkansas has spent significant resources developing this system, which is partially complete. The State of Arkansas anticipates an immediate need for the system and rendering it useless would be directly contrary to any goal of improving public safety resources. Further, the Commission created the general prohibition on new equipment in order to help define and contain costs of relocation. Granting the State of Arkansas's waiver request, however, will not go against this goal; under the rules adopted in the Order, the State of Arkansas's request does not affect the cost of relocation because the equipment deployed after August 30, 2007 would not be eligible for relocation funding. Even so, because the State of Arkansas can fairly estimate which equipment will be deployed and will need to be relocated, certainty and clarity of costs would not be impacted.

Moreover, although these goals of defining and containing costs are important, they do not outweigh the State of Arkansas's immediate need to access viable, usable spectrum in the next few years, or the public's ultimate interest in the protections afforded by such access. The State of Arkansas's system will fill an immediate need to help save lives and property in the short term. Allowing the State of Arkansas to deploy its equipment as planned will further the Commission's goal of helping public safety provide the most effective and efficient communications for the American public.

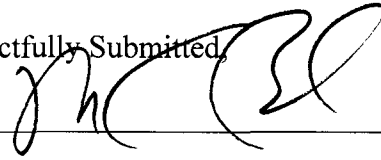
IV. CONCLUSION

The State of Arkansas respectfully requests that the Commission grant a waiver of the prohibition on deploying new equipment to permit the State of Arkansas to deploy new equipment for existing operations outside of the consolidated narrowband blocks. The State of

Arkansas's circumstances warrant a deviation from this rule and such deviation will help serve the public interest.

Respectfully Submitted,

By: _____

A handwritten signature in black ink, appearing to be "Mike Beebe", written over a horizontal line.

**Governor Mike Beebe
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State Capitol
Little Rock, AR 72201**